

California Department of Consumer Affairs

Legal Guide CR-9

CREDIT REPAIR SERVICES

October 1996

A. Statutory Coverage (Civ. Code §§ 1789.12, 1789.16.)

Credit services organizations (also known as "CSOs" or "credit repair services") do not provide credit. Rather, CSOs offer to obtain loans or extensions of credit for consumers who have experienced credit problems, or to correct or improve such consumers' credit records. As defined by the Credit Services Act of 1984 ("Act"), CSOs sell, provide, or perform (or promise) any of the following services for consideration:

1. To improve a buyer's credit record, history, or rating.
2. To obtain a loan or other extension of credit for a buyer.
3. To provide advice or assistance to a buyer with regard to either of the above. (Civ. Code § 1789.12(a).)

The buyer of a CSO's services can cancel the contract, without penalty or obligation, within five days after signing it. (See discussion below.) (Civ. Code § 1789.16(a),(b).)

B. Statutory Exemptions (Civ. Code §§ 1789.12(a), (b), 1789.19(b).)

The Act exempts certain individuals and institutions from its provisions, including:

1. Lenders or creditors who are (a) licensed to make loans or extensions of credit under California or federal law, (b) regulated and supervised by a state or federal official or agency as to those loans or extensions of credit, and (c) whose business is the making of those loans or extensions of credit.
2. Banks and savings institutions whose deposits or accounts are insurable by the FDIC.
3. Non-profit organizations under § 501(c)(3) of the Internal Revenue Code that have received a final ruling or determination from the Internal Revenue Service that they are not private foundations and are exempt from taxation under § 501(a) of the Code. (Section 501(a) contains a laundry list of corporations that are exempt from tax, such as charitable corporations and religious

organizations.)

4. Licensed proraters, acting within the course and scope of their licenses.
5. Licensed real estate brokers performing an act for which a license is required under the Real Estate Law (Bus. & Prof. Code §§ 1000 et seq.) and who are acting within the course and scope of that license.
6. Attorneys licensed in California rendering services within the course and scope of the practice of law. (The exemption does not apply to an attorney who is an employee of, or who is otherwise directly affiliated with, a credit repair agency.)
7. Broker-dealers who are registered with the Securities Exchange Commission or the Commodities Futures Trading Commission, acting within the course and scope of applicable regulations. (Civ. Code §§ 1789.12(a)(1), (b).)

In any proceeding involving the Act, any person who claims an exemption or an exception from a definition has the burden of proving it. (Civ. Code § 1789.19(b).)

C. Statutory Purpose and Construction (Civ. Code § 1789.11(b),(c).)

While some credit services organizations provide consumers legitimate services, others have been known to accept payment and not provide any service; to provide inaccurate or misleading advice (e.g., referring consumers to potential creditors who would have granted them credit in any event); and to engage in questionable credit repair practices (e.g., disputing every entry on a consumer's credit report).

Most of the services performed by credit services organizations can be performed by consumers acting on their own behalf, exercising rights under the credit reporting laws and other laws.

The purpose of the Act is to provide prospective buyers of credit repair services with the information necessary to make an intelligent decision regarding the purchase of those services, and to protect the public from unfair or

deceptive advertising and business practices. (Civ. Code § 1789.11(b).) The Act is to be liberally construed to achieve these purposes. (Civ. Code § 1789.11(c).)

D. Affirmative Requirements. Every credit services organization must:

1. File a registration application with, and receive a certificate of registration from, the Attorney General's Office before doing business in California. (Civ. Code § 1789.25.)
2. Obtain a \$100,000 surety bond from an admitted surety in favor of the State of California for the benefit of any person damaged by any violation of the Act. (Civ. Code § 1789.18.) (The bond must be maintained for two years after the CSO stops doing business in California.)
3. Give the buyer, before the contract for services is signed, an information statement that complies with Civil Code Section 1789.15 (described below). (Civ. Code §§ 1789.14, 1789.15.)
4. Not provide any service to a buyer except pursuant to a written contract that complies with Civil Code Section 1789.16 (described below). (Civ. Code § 1789.16.)
5. Complete the agreed services within six months after the date the buyer signs the contract for services. (Civ. Code § 1789.13(b); see Civ. Code § 1789.16(a)(3).)
6. Maintain an agent for service of process in this state. (Civ. Code § 1789.13(j).)

E. Prohibited Practices (Civ. Code §§ 1789.13, 1789.17, 1789.19(a).)

A credit service organization (or a salesperson, representative, or independent contractor) cannot:

1. Charge or receive any consideration until it has fully performed the agreed services. (Civ. Code § 1789.13(a).)
2. Charge or receive any consideration solely for referring a buyer to a retail seller or other credit grantor for an extension of credit, if the credit is, or will be, on substantially the same terms as those available to the general public, or on substantially the same terms as the buyer could have obtained without the CSO's assistance. (Civ. Code § 1789.13(c).)
3. Make, or advise the buyer to make, any untrue or misleading statement to a consumer credit reporting agency, or to any present or potential creditor, such as untrue statements about the

buyer's identification, home address, credit worthiness, credit standing, or credit capacity. (Civ. Code § 1789.13(d).)

4. Remove, or assist or advise the buyer to remove, accurate and non-obsolete adverse information from the buyer's credit record. (Civ. Code § 1789.13(e).)
5. Create, or assist or advise the buyer to create, a new credit record by using a new name, address, social security number, or employee identification number. (Civ. Code § 1789.13(f).)
6. Make any untrue or misleading representation, or engage in any fraudulent or deceptive act or practice, in the offer or sale of its services. (Civ. Code §§ 1789.13(g), (h).)
7. Advertise its services without being registered with the Attorney General's Office. (Civ. Code § 1789.13(i).)
8. Transfer or assign its certificate of registration. (Civ. Code § 1789.13(k).)
9. Submit a buyer's dispute to a credit reporting agency without the buyer's knowledge. (Civ. Code § 1789.13(l).)
10. Call a credit reporting agency or use its toll free number and represent the CSO as the buyer without the buyer's prior authorization. (Civ. Code § 1789.13(m).)
11. Attempt to have a buyer waive any rights under the Act. (Any such attempt is a violation of the Act, and any such waiver is void and unenforceable.) (Civ. Code § 1789.19(a).)
12. Breach the contract, or any contractual obligation, the CSO has with the buyer. (Any such breach constitutes a violation of the Act.) (Civ. Code § 1789.17.)

F. Requirements Relating to the Information Statement and the Contract (Civ. Code §§ 1789.14, 1789.15, 1789.16.)

1. Information Statement

A credit services organization must give the buyer an information statement which contains all of the following before the buyer signs a contract for the CSO's service. (Civ. Code § 1789.14.)

- a. A complete and detailed description of the services to be provided by the CSO, and the total cost or obligation to the buyer. (Civ. Code §

1789.15(a).)

- b. Notice of the buyer's right to proceed against the CSO's bond as set forth in Civil Code section 1789.18, and the name and address of the surety which issued the bond. (Civ. Code §§ 1789.15(b), (c).)
- c. A complete and accurate statement of the availability of nonprofit credit counseling services. (Civ. Code § 1789.14(d).)
- d. A statutorily prescribed statement of consumers' rights under the state and federal credit reporting laws to obtain their credit reports and to dispute inaccurate information in them. (Civ. Code § 1789.15.)

2. Contract

The contract for services between a buyer and a credit services organization must be in writing, must be signed and dated by the buyer, and must contain all the following. (Civ. Code § 1789.16.)

- a. The terms and conditions of payment, including the total of all payments to be made by the buyer. (Civ. Code § 1789.16(a)(2).)
- b. A complete and detailed description of the services to be performed by the CSO, and the estimated date, or length of time, for completion of the services. The estimated length of time for performing services cannot exceed six months (or a shorter period if so prescribed by the Department of Justice). Any guarantees or promises of any refund also must be completely described. (Civ. Code § 1789.16(a)(3).)
- c. The CSO's principal business address and the name and address of its agent authorized to receive service of process (other than the Secretary of State). (Civ. Code § 1789.16(a)(4).)
- d. A conspicuous, statutorily prescribed statement of the buyer's right to cancel the contract by midnight of the fifth day after the contract is signed. The notice must be in at least 10-point bold type, and be near the buyer's signature line. (Civ. Code § 1789.16(a)(1).)

The CSO must give the buyer a fully completed contract, and all other documents that it has required the buyer to sign, at the time they are signed. Duplicate, completed "Notice of Cancellation" forms, in the same language as the contract, must be attached to the contract, and must be easily detachable from it. (Civ.

Code § 1789.16(b).) Section 1789.16(b) prescribes the type size of this notice and its content, including the date on which the cancellation period expires, and requires that the seller return any payment within 15 days after receipt of notice of cancellation (which may be any written notice of cancellation).

G. Sanctions and Remedies (Civ. Code §§ 1789.18, 1789.20, 1789.21, 1789.22, 1789.24.)

The Act's provisions are not exclusive, and its remedies are in addition to other remedies or procedures prescribed by law. (Civ. Code § 1789.22.)

1. Criminal Sanctions

Any violation of any provision of the Act is a misdemeanor. The Attorney General, district attorneys, and city attorneys may prosecute such violations, and may also seek injunctive relief. (Civ. Code § 1789.20.)

2. Civil Remedies

- a. A buyer who is injured by a CSO's violation of the Act or breach of contract may recover actual damages at least equal to the amount paid to the CSO, plus costs and reasonable attorneys fees. The buyer also may obtain injunctive relief. The court, in its discretion, may award punitive damages. (Civ. Code § 1789.21(a).)
- b. A person who claims against a CSO's bond for a violation of the Act may bring an action at law against the CSO and the surety. The surety is liable for actual, but not punitive, damages, and its aggregate liability to all claimants cannot exceed the amount of the bond. (Civ. Code § 1789.18(b).)
- c. Credit reporting agencies, users of credit reports, and suppliers of credit information may bring an action for damages, injunction, or both, for violation of the act. The prevailing plaintiff is entitled to reasonable attorney's fees and costs. (Civ. Code § 1789.21(b).)

NOTICE: We attempt to make our legal guides accurate as of the date of publication, but they are only guidelines and not definitive statement of the law. Questions about the law's application to particular cases should be directed to a specialist.

Prepared by:

Legal Services Unit

October 1996